

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition by the Colorado Public Utilities)	
Commission, Pursuant to 47 CFR §54.207(c),)	
For Commission Agreement in Redefining the)	CC Docket No. 96-45
Service Area of Delta County Tele-Comm, Inc.,)	
A Rural Telephone Company)	
_____)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB)² and pursuant to sections 1.415 and 1.419 of the Commission's rules,³ hereby submits its comments on the Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR §54.2079(c), for Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., a Rural Telephone Company (Petition). As the *Public Notice* notes, the Colorado Public Utilities Commission (CO PUC) "proposes to define [Delta County Tele-Comm, Inc.'s (Delta's)] Delta's service area as an area different from the study area of Delta for the purpose of determining federal universal service obligations and support mechanisms. Specifically, . . . [CO PUC] proposes to designate each individual wire center of Delta as a separate service area."⁴ USTA urges the Commission to

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.
² *Public Notice*, CC Docket No. 96-45, DA 02-2383 (rel. Sept. 25, 2002) soliciting comment on the Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR §54.2079(c), for Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., a Rural Telephone Company (*Public Notice*).
³ 47 C.F.R. §§1.415 and 1.419.
⁴ *See Public Notice*.

withhold its agreement with CO PUC's proposed service area definition for areas served by Delta County Tele-Comm, Inc. (Delta) within Colorado because the proposed service area definition is inconsistent with the FCC order establishing disaggregation of universal service support, FCC service area rules, and the requirements of the Telecommunications Act of 1996 (1996 Act), and because the proposed service area definition raises significant public policy concerns.

DISCUSSION

I. CO PUC's Proposed Service Area Definition Is Inconsistent with the FCC Order Establishing Disaggregation of Universal Service Support, FCC Service Area Rules, and the Requirements of the 1996 Act.

In a state proceeding last year CO PUC adopted a rule (Rule 11)⁵ that required study areas of rural incumbent local exchange carriers (Rural ILECs) to be disaggregated according to the universal service disaggregation plans chosen by those carriers as Eligible Telecommunications Carriers (ETCs).⁶ Under Rule 11, a Rural ILEC's study area is *automatically* disaggregated if it disaggregates the universal service support it receives. CO PUC claimed that the "proposed changes to the ETC rules are an attempt to make them consistent with the new regulations adopted in the [FCC's] Fourteenth Report and Order."⁷

⁵ See 4 Code of Colorado Regulations 723-42-11, Use of Disaggregation Paths (Rule 11) ("the Commission will use the disaggregation plans of each incumbent Eligible Telecommunications Carrier established pursuant to Rule 10 not only for disaggregation of Colorado HCSM support but also for the disaggregation of the study area of the rural incumbent local exchange carrier pursuant to 47 CFR Section 54.207 into smaller discrete service areas").

⁶ See *Proposed Amendments to the Rules Concerning the Colorado High Cost Support Mechanism*, 4 CCR 723-41, and the *Rules Concerning Eligible Telecommunications Carriers*, 4 CCR 723-42, Recommended Decision of Administrative Law Judge Ken F. Kirkpatrick Adopting Rules, Docket No. 01R-434T, Decision No. R01-1306 (Dec. 21, 2001) (*High Cost Support for ETCs*) at 9 ("the rules have been redrafted in an attempt to clarify that disaggregation for the purposes of receiving support also disaggregates the study area for purposes of competitive entry").

⁷ See *id.* at 2.

Despite its claims, the rule CO PUC adopted is inconsistent with the FCC Order that established disaggregation of universal service support.⁸ In an Order on Reconsideration of the Fourteenth Report and Order, the FCC addressed a request “that whenever a rural study area is disaggregated for purposes of funding, the study area should *automatically* be disaggregated for purposes of ETC designation as well.”⁹ The FCC denied that request. By denying that request, the FCC has already addressed and resolved the substantive request of CO PUC’s Petition. Accordingly, CO PUC’s Rule 11 and the requested redefinition of Delta’s service area are inconsistent with the FCC’s Fourteenth Report and Order.

More specifically, Rule 11 is inconsistent with the FCC’s service area rules, specifically 47 C.F.R. §54.207(b), and with Section 214(e)(5) of the 1996 Act. Rule 11 states that the disaggregation of a Rural ILEC’s study area is pursuant to the CO PUC rule under which such carriers can disaggregate universal service support (Rule 10),¹⁰ which mirrors the FCC Rule Section 54.315 on disaggregation and targeting support,¹¹ and is pursuant to the FCC’s service area rules (*i.e.*, 47 C.F.R. §54.207), which permits a Rural ILEC’s study area to be disaggregated into smaller service areas. However, the *automatic* nature and lack of individual company applicability of Rule 11 is blatantly inconsistent with the FCC’s service area rules and Section 214(e)(5) of the 1996 Act.

⁸ See *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, CC Docket Nos. 96-45 and 00-256 (rel. May 23, 2001) (Fourteenth Report and Order).

⁹ See *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Petitions for Reconsideration filed by: Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, Illinois Commerce Commission, National Telephone Cooperative Association*, Order on Reconsideration, CC Docket Nos. 96-45 and 00-256, ¶17 (rel. June 13, 2002) (emphasis added) (Order on Reconsideration).

¹⁰ See 4 Code of Colorado Regulations 723-42-10, Disaggregation and Targeting of Support by Rural Incumbent Local Exchange Carriers.

¹¹ See 47 C.F.R. §54.315.

Section 54.207(b) and Section 214(e)(5) state that a rural telephone company's service area is its study area "unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area *for such company*."¹² CO PUC acknowledges these requirements, but does not explain how it has specifically complied with them. Rather, it claims that in redefining the service area of Delta it is consistent with the Federal-State Joint Board's (Joint Board's) recommendations.¹³ Yet, consistency is not what the 1996 Act or the FCC's Rules require. Rather, they require any change in a study area to have taken into account recommendations of the Joint Board with regard to such change and they require any study area change to have been tailored to the specific company for which the study area is being changed.

The only consideration CO PUC appears to have given to Joint Board recommendations was the recommendations the Joint Board made in its Recommended Decision in *Federal-State Joint Board on Universal Service in CC Docket 96-45*¹⁴ and the recommendations it made and that were incorporated into the FCC's Fourteenth Report and Order.¹⁵ Any recommendations the Joint Board made there are of a general nature, not specific to the proposed change in Delta's study area. Thus, the requirement that the Joint Board take into account the proposed study area change has not been met.

In addition, CO PUC has adopted a rule that was developed as part of a proceeding that had general applicability for ETCs, service areas, and universal service, not a proceeding directed at the disaggregation of a study area of a specific company. Thus, the requirement that

¹² 47 C.F.R. §54.207(b) and 47 U.S.C. § 214(e)(5) (emphasis added).

¹³ See Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR §54.2079(c), for Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., a Rural Telephone Company (Petition) at 8, Aug. 9, 2002.

¹⁴ See 12 FCC Rcd 87 (1996).

¹⁵ See Petition at 6, fn.4, and 8.

any change in a study area initiated by the FCC or a state commission be made with regard to a particular company has not been met.

CO PUC's proposed service area definition is inconsistent with the FCC's Fourteenth Report and Order, Section 54.207(b) of the FCC's Rules, and Section 214(e)(5) of the 1996 Act. For these reasons the FCC should not agree to CO PUC's request to define Delta's service area as an area other than its study area.

II. CO PUC's Proposed Service Area Definition Raises Significant Public Policy Concerns.

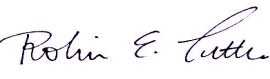
CO PUC's Rule 11 and implementation of the service area definition it proposes in the Petition, combined with the fact that Delta, like other Rural ILECs, remains a carrier of last resort sets up situation that encourages new entrants that qualify as ETCs to receive universal service support to serve the most lucrative areas that Rural ILECs serve, disadvantaging the Rural ILECs' customer revenue and investment opportunities. If a Rural ILEC's study area is disaggregated according to the universal service support disaggregation path it chooses, as CO PUC proposes, then new entrants will seek to serve the disaggregated service areas where average revenue per customer is highest, but not service areas where average revenue per customer is lowest. Yet, Rural ILECs as carriers of last resort must continue to serve the lower revenue service areas while fighting the competition of the new entrants to serve the higher revenue service areas, the revenue from which have afforded Rural ILECs with investment capital to update and expand their networks and the ability to provide quality service to all customers in their study area. In short, CO PUC's efforts to equalize universal service support to Rural ILECs and new entrants disadvantages Rural ILECs by weakening their financial viability while they continue to carry the responsibility and bear the cost of serving, or being ready to serve, all customers throughout their entire study area. Competition policy should be about

removing barriers to entry, not handicapping incumbents in order to create artificial incentives for entry by competitors. Segmenting a rural study area at very granular levels unfairly allows new entrants to target the best customers of a Rural ILEC by targeting the most attractive service areas. The Rural ILEC is then left with the responsibility of serving the less financially attractive service areas (ignored by the new entrant) and still remaining at the ready to serve all customers in those more lucrative service areas where the new entrants have chosen to compete. Given the challenge already inherent in serving high cost rural areas, this is a burden that Rural ILECs should not be required to bear and that does not serve the long term best interests of rural customers.

The FCC should not agree to CO PUC's rules and proposals or to those of any other state commission that set up a situation where Rural ILECs are disadvantaged by being forced to compete for the necessary revenue of their lucrative revenue service areas while continuing to carry disparate carrier of last resort responsibilities and to bear those costs. For these reasons the FCC should not agree to CO PUC's request to define Delta's service area as an area other than its study area.

Respectfully submitted,

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